

EXHIBIT "E"

ORIGINAL
COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PEGGY FARGANIS,

Plaintiff,

-against-

06-CV-5238

TOWN OF MONTGOMERY, DENNIS BARNETT,
MICHAEL TABACK, KENNETH BYRNES,
DANIEL THORSON, sued in their
individual capacities,

Defendants.
-----X

Date: July 26, 2007
Time: 10:25 a.m.
Place: 15 Railroad Avenue
Chester, New York

DEPOSITION OF DENNIS BARNETT,

a Defendant in the above-captioned matter, held pursuant to
Agreement, at the above time and place, before Karen M.
Flemmig, Court Reporter, a Notary Public of the State of New
York.

COURT REPORTING ASSOCIATES, INC.
1699 Route 6; P.O. Box 113

Carmel, New York 10512

(845) 225-0024

COURT REPORTING ASSOCIATES, INC.

1 DENNIS BARNETT

2 A Just one, ma'am.

3 Q Which one is that?

4 A The rank of lieutenant.

5 Q When was that rank added?

6 A I believe it was a month and a half to two
7 months ago.

8 Q In 2007?

9 A That's correct, ma'am.

10 Q Are you familiar with the Town of Montgomery
11 Police Department rules and regulations?

12 A I am familiar, yes, ma'am.

13 Q At some time during your employment by the
14 Town of Montgomery Police Department, did you receive a
15 copy of the rules and regulations of the police
16 department?

17 A Yes, ma'am.

18 Q When did you receive that, the rules and
19 regulations?

20 A I don't know.

21 Q Was it when you were first employed?

22 A I don't think so, but I don't know.

23 Q Sometime thereafter?

24 A Yes, ma'am.

25 Q Have you ever read the rules and regulations

1 DENNIS BARNETT

2 of the Town of Montgomery Police Department?

3 A Yes, ma'am.

4 Q Did you understand them?

5 A Yes, ma'am.

6 Q Do those rules and regulations require you, as
7 a police officer, to know the laws governing your
8 conduct as a police officer?

9 MR. MOROKNEK: Note my objection as
10 to what the rules and regulations require. The
11 rules and regulations speak for themselves.

12 A Can you repeat the question, ma'am?

13 Q Sure. Do you know --

14 Are you required, as a police officer, to
15 know the laws governing your conduct as a police
16 officer?

17 A Yes, ma'am.

18 Q Sergeant Barnett, I'm showing you an exhibit
19 that's been marked Plaintiff's Exhibit 1. I'm providing
20 a copy to your counsel.

21 Sergeant, have you had an opportunity to
22 inspect Plaintiff's Exhibit 1?

23 A (Witness peruses document.) Yes, ma'am.

24 Q Can you identify this exhibit for me, please?

25 A This is a copy, apparently, of the Town of

1 DENNIS BARNETT

2 Montgomery Police Department rules and regulations.

3 Q Is this the document you were referring to in
4 your testimony a few minutes ago?

5 A Yes, ma'am.

6 Q You see the date of this document, at sort of
7 the lower right-hand corner, first page, dated September
8 7, 2000, "Adopted by resolution of the Town Board"?

9 A Yes, ma'am.

10 Q Does that refresh your recollection as to
11 approximately when you received a copy of these rules
12 and regulations?

13 A It may have been sometime in the year
14 2000. I don't recall.

15 Q I'd like you to turn to page 10. I'd like you
16 to look at paragraph three. Do you see that paragraph,
17 "Conformance to Laws"?

18 A Yes, ma'am.

19 Q It says, "Department members shall obey all
20 laws of the United States and of any state and local
21 jurisdiction in which the officers are present." Do you
22 see that?

23 A Yes.

24 Q Have you seen that before?

25 A Probably when I first got them, ma'am.

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2 Q Do you understand paragraph three,
3 "Conformance to Laws," to be binding upon you as a
4 police officer for the Town of Montgomery?

5 MR. MOROKNEK: Objection to the form
6 of the question. You can answer.

7 A Yes, ma'am.

8 Q Turn to page 15, please. I'd like you to look
9 at paragraph numbered 24, entitled "Courtesy." Do you
10 see that?

11 A Yes, ma'am.

12 Q That reads, "Members of the department shall
13 be courteous to the public. Officers shall be tactful
14 in the performance of their duties, shall control their
15 tempers and exercise the utmost patience and discretion
16 and shall not engage in argumentative discussions, even
17 in the face of extreme provocation. In the performance
18 of their duties, officers shall not use coarse, violent,
19 or profane language or gestures and shall not express any
20 prejudice concerning race, religion, politics, national
21 origin, lifestyle, or similar personal characteristics."

22 Do you see that, Sergeant?

23 A Yes, ma'am.

24 Q Do you consider paragraph 24 on page 15 to be
25 binding upon you as a police officer for the Town of

1 DENNIS BARNETT

2 Montgomery?

3 A Yes, ma'am.

4 Q Would you turn to page 37, please?

5 A (Witness complies).

6 Q Do you see a paragraph entitled "Other forms
7 of prohibited harassment"?

8 A Yes, ma'am.

9 Q Do you see that that reads, "Just as sexual
10 harassment is prohibited, so is harassment on the basis
11 of race, color, religion, creed, national origin,
12 citizenship, age, disability, pregnancy, marital status,
13 veteran status, or any other status protected by law"?

14 A Yes.

15 Q And you've read that before?

16 A Yes, ma'am.

17 Q Have you ever heard of the Americans with
18 Disabilities Act?

19 A I've heard of it, yes.

20 Q Do you understand what it means in lay terms?

21 A Not totally, no, ma'am.

22 Q What is your understanding of the Americans
23 with Disabilities Act?

24 MR. MOROKNEK: Objection to the form
25 of the question and the question itself. He's not

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2 MS. ULLRICH: He is an officer of the
3 Town of Montgomery.

4 MR. MOROKNEK: Right.

5 MS. ULLRICH: I'm asking him what his
6 understanding is of the Americans with Disabilities
7 Act. It is a proper question.

8 MR. MOROKNEK: I understand.

9 MS. ULLRICH: Are you directing him
10 not to answer?

11 MR. MOROKNEK: Not yet.

12 MS. ULLRICH: Then I'd like him to
13 answer the question.

14 MR. MOROKNEK: I know what you'd
15 like. Give me a minute. Read back the question,
16 specifically, please.

17 (Question read by reporter.)

18 MR. MOROKNEK: Kindly note my
19 objection to the form of the question. You can
20 answer the question.

21 A My understanding is that it's a law that
22 covers people with certain disabilities.

23 Q Do you have any understanding as to what kind
24 of actions it prohibits with respect to persons with
25 disabilities?

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2 A No, ma'am.

3 Q Have you ever received any training as a
4 police officer in discriminating against people with
5 disabilities?

6 A I don't recall so, ma'am.

7 Q Have you ever received any training during
8 your employment by the Town of Montgomery in the issues
9 of discrimination against people because of certain
10 characteristics?

11 MR. MOROKNEK: I'm so sorry. Please
12 read that back.

13 (Question read by reporter.)

14 A I believe I have.

15 Q Describe the training that you have received
16 about discrimination.

17 A I don't recall specifically what it was.
18 But I believe some was covered in the police
19 academy, and I believe in accordance with the Town
20 of Montgomery policies and procedures, there's
21 something in place that was read by me.

22 Q When you say "police academy," what
23 institution are you referring to?

24 A The police academy. The academy which
25 trains police officers. I couldn't recall what or

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2 Q So you told Officer Byrne, B Y R N E, or
3 Byrnes, B Y R N E S?

4 A With an S.

5 Q You told Officer Byrnes to attend to the child
6 because he's an EMT?

7 A That's correct.

8 Q What did you tell Officer Thorson to do?

9 A At, I believe, the same moment in time, or
10 shortly thereafter, Chief Byrnes informed me that
11 the driver of the vehicle, which I believe was a
12 van, was possibly impaired and was slurring her
13 words to where she could not answer his questions.

14 Once that information was retrieved, I
15 instructed Officer Thorson to stay with the driver
16 until we found out specifically what had happened.
17 I don't remember where the driver was, whether she
18 was still in the car, whether she was out of the
19 car. I don't remember specifically where the people
20 were.

21 Q What did you do after that?

22 A The condition of the child was the primary
23 goal. I basically got the totality of the
24 information that was retrieved. Some of what the
25 witness saw, which was she said she saw the child

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2 fall out of the car. Officer Byrnes was told to
3 give him treatment as much as humanly possible. I
4 asked him the condition of the child. The child was
5 extremely upset. Mrs. Farganis was brought out of
6 the car, the person I know to be that, brought to
7 the back of the car, I don't specifically remember
8 how or if she was already out of the car. And she
9 was interviewed as to what had happened.

10 Mrs. Farganis was severely upset because
11 of the number of red lights around her child. She
12 stated her child had a seizure disorder or medical
13 disorder and could die at any moment. She repeated
14 that phrase over and over and over again.

15 The first concern of mine after hearing
16 that was to get on the radio and advise the EMS unit
17 that that was, indeed, a possible life threat, and
18 they needed to step up their response so they could
19 deal with this child. She kept repeating it, that
20 he could die at any moment. He has a head injury.
21 If he hit his head, he could die at any moment. EMS
22 was apprised of that, and Officer Byrnes was told of
23 that. The responding medical units and fire units
24 that came after that were also told via him, and
25 they issued appropriate care. After that, I spoke

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2 with Officer Thorson, and we went over to speak with
3 Mrs. Farganis.

4 Q Did you interview Mrs. Farganis? You said she
5 was interviewed. Did you interview her?

6 A I don't remember who interviewed her. I
7 don't remember what happened or who talked with her.
8 The information came out that her child had, in
9 fact, fell out of a moving vehicle, and he had a
10 seizure condition where if lights were around -- not
11 lights. But if he were freaked out or scared
12 enough, he could die at any moment. And a head
13 injury could do that to her son. That was our
14 primary goal.

15 Q Did you personally at that time speak with the
16 witness?

17 A No, ma'am.

18 Q You asked Officer Byrnes what the condition of
19 the child was?

20 A Soon after, yes, ma'am. It wasn't all in
21 the same.

22 Q What did Officer Byrnes tell you about the
23 condition of the child?

24 A I explained to him the condition I was
25 apprised of, and he took care of the care. I spoke

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2 to Officer Byrnes about the care of the child after
3 the incident was over, not to say, "How is the kid
4 doing?" His job was to deal with the child and
5 assist the medical personnel that was coming. That
6 was his job.

7 Q But you had time between the conversation or
8 receiving information from Mrs. Farganis that she was
9 very worried about her child and the time when the
10 ambulance arrived to call the ambulance and tell them to
11 hurry up; is that correct?

12 MR. MOROKNEK: Objection to the form
13 of the question. You can answer. Do you understand
14 the question?

15 THE WITNESS: No, I don't understand.

16 Q You described that you received information
17 either from someone else or relayed from Mrs. Farganis
18 or from Mrs. Farganis herself that she was very worried
19 about her child, about the possible seizure disorder,
20 and concern that her child would have another seizure or
21 could die. You received that information?

22 A That's correct.

23 Q You don't recall whether you received it from
24 Mrs. Farganis herself or from someone else?

25 A That's true.

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2 far is that from Mike's Deli?

3 A Ten, 12, 15 miles.

4 Q Is it more likely that the Town of Montgomery
5 Ambulance Corps's ambulance came from the Scotts Corners
6 location?

7 A I don't know their operating protocol,
8 ma'am.

9 Q Are there personnel on duty at all times at
10 both locations?

11 A They're volunteer, ma'am. I don't know
12 their protocol.

13 Q Once you assigned Officer Byrnes to attend to
14 the child and apprised him of the mother's concerns for
15 his physical well-being and you called the ambulance
16 corps to let them know of the mother's concerns, what
17 did you do next?

18 A I interviewed the driver of the vehicle,
19 which I found out to be Mrs. Farganis.

20 Q Tell me about that interview. What did you
21 do? What did you say? What tests did you conduct?

22 A Mrs. Farganis, when I saw her, was on the
23 back of the vehicle that she had apparently driven
24 and apparently the child had fallen out of. I asked
25 her what happened. She had extremely slurred words.

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2 She could barely stand. I said, "Do you need to
3 sit?" She said, "Yes." She sat on the back bumper.

4 I asked her specific questions about her
5 driving and where she was driving to and from and
6 what happened. I don't remember the specifics of
7 the answers she gave me. She had severely slurred
8 words and was very, very upset. She kept
9 reiterating, "My kid could die at any moment. My
10 kid could die at any moment." I said, "Ma'am, I
11 have EMTs and personnel treating your son. What
12 happened here today?"

13 I don't know if Officer Thorson was
14 trained in standardized field sobriety. But because
15 of the way she was slurring her words, she could
16 barely stand up, I asked her specific questions
17 about impairment, if she had any medical conditions,
18 if she was under the influence of any drugs, if she
19 took any drugs on a normal basis.

20 There was a point in time where she stated
21 that she did take some medication, and she told me
22 what that was. I don't remember. She also stated
23 that she had multiple sclerosis, and that that was
24 why she couldn't stand. I asked her if there were
25 any restrictions on her license from a doctor saying

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2 right now.

3 Q So a normal, civil speaking tone?

4 A She was highly upset. She did not want
5 medical personnel looking at her child. She did not
6 want the child looked at by anybody. She kept
7 saying to me, "My child could die at any moment. He
8 needs to go to a hospital. He doesn't need to be
9 looked at by these people that are here," referring
10 to Officer Byrnes and the people that were attending
11 him. I had to calm her down just to be able to
12 understand her.

13 Q So it's your testimony that Mrs. Farganis
14 believed that her child was in mortal danger but did not
15 want medical personnel looking at him?

16 A She kept saying to me she needed to be
17 with him so that medical attention could be bestowed
18 upon him. That was the gist of what she kept
19 saying. Not that she didn't want it, but that she
20 didn't want people looking at her kid alone.

21 Q Did you take her over to her child so that she
22 could stand there while the medical personnel
23 administered care to him?

24 A She was in the vicinity to oversee
25 everything that was done to her child.

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2 Q How far away from her child was she at this
3 point?

4 A It wasn't that far. The parking lot is
5 not that big.

6 Q How deep is that parking lot?

7 A I don't know.

8 Q Approximately?

9 A I don't know, ma'am.

10 Q A couple hundred feet?

11 MR. MOROKNEK: Objection to the form
12 of the question. The pictures are here. They speak
13 for themselves.

14 A I don't know how big it is, ma'am.

15 Q Did you at any time administer a field
16 sobriety test that required Mrs. Farganis to walk in a
17 straight line?

18 A I administered the horizontal gaze
19 nystagmus test, and I administered another test.
20 I'm not sure if it was the walk-and-turn or the
21 one-leg stand. She couldn't do it. So I sat her
22 back down. I did not want her to fall.

23 Q Did she tell you that she couldn't do it
24 because of her MS?

25 A She told me she couldn't stand. That's

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2 all she kept saying, "I cannot stand."

3 Q Because of her MS?

4 A She didn't say that specifically, ma'am.

5 Q You knew she had MS because she told you that?

6 A I don't know if it was prior to doing the
7 field sobriety test or after, but she did tell me
8 she had it, ma'am. Yes, ma'am.

9 Q Did you ever at any time ascertain she was not
10 under the influence of alcohol?

11 A Absolutely.

12 Q And she wasn't?

13 A Not at that time, no, ma'am.

14 Q Did you ascertain that she was not under the
15 influence of any illegal drugs?

16 A At that point, yes, I made the
17 determination that she had a medical condition that
18 was causing the so-called apparent impairment that
19 was evident to people who had seen her.

20 Q Did you ask her what medication she was
21 taking?

22 A Yes.

23 Q What medications was she taking?

24 A I don't recall what she told me.

25 Q Did you make any notation of the medication

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2 weapon on her person. I did not know, however, what
3 was in the vehicle.

4 Q Did you ever personally speak with Velvet
5 Convoy?

6 A I don't believe so, no, ma'am.

7 Q Did there come a time when Mrs. Farganis was
8 placed in handcuffs?

9 A Yes.

10 Q Did you, yourself, personally apply the
11 handcuffs to her, or someone else?

12 A One of my other officers applied the
13 handcuffs after the entirety of the circumstances of
14 the entire event was taken into consideration and it
15 was deemed probable cause to arrest her for
16 endangering the welfare of a minor.

17 Q Did you order her to be placed in handcuffs?

18 A When a person is arrested, ma'am, our
19 procedure is to handcuff the prisoner before they
20 get placed in the car. Yes, ma'am. She was placed
21 in handcuffs. I don't know if I specifically said
22 to place them on her. The totality of the
23 circumstances led me to believe, and conferring with
24 all the officers there, that the probable cause
25 existed for the arrest of endangering the welfare of

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2 a minor, and she was arrested for that offense.

3 Q When you placed her in handcuffs, were her
4 hands cuffed in front of her or behind her?

5 A I don't remember where she was placed in
6 handcuffs, ma'am.

7 Q Did you personally, Sergeant Barnett, do
8 anything to ascertain before Ms. Farganis was placed in
9 handcuffs that the handcuffs would not exacerbate her
10 disability?

11 A Can you repeat that question, please,
12 ma'am?

13 Q Did you personally do anything to ascertain
14 that putting Mrs. Farganis in handcuffs would not
15 exacerbate her disability, make it worse?

16 A I don't understand what you're trying to
17 ask, ma'am.

18 Q I'm asking if you did anything, if you found
19 out anything, if you talked to anybody, if you
20 determined that placing Mrs. Farganis in handcuffs
21 wouldn't make her disability worse, wouldn't worsen her
22 multiple sclerosis?

23 A I had no information to that effect, no.

24 Q Did you make any attempt to find out whether
25 it would or not?

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2 A No, ma'am. I did not.

3 Q You indicated earlier that it is police
4 procedure to place handcuffs on a person when that
5 person is arrested; is that correct?

6 A Yes, ma'am.

7 Q Is that Town of Montgomery police procedure?

8 A That's Town of Montgomery police
9 procedure. That's basic police procedure. It's
10 also for the safety of the officer and the prisoner.

11 Q Is that procedure written somewhere?

12 A If it is, it's in our Town of Montgomery
13 police protocol. It's also in many manuals, New
14 York State Police Manual. It's in many manuals.

15 MS. ULLRICH: I'm going to request
16 the production of the Town of Montgomery police
17 protocol.

18 (TOWN OF MONTGOMERY POLICE PROTOCOL
19 requested by counsel.)

20 (Brief recess taken.)

21 BY MS. ULLRICH:

22 Q How long were you, approximately, at Mike's
23 Deli?

24 A I don't recall how long I was there.

25 Q No recollection, whether it was a half an

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2 I don't believe I did.

3 Q You never talked with him on the telephone?

4 A I don't remember.

5 Q Did you have any contact with Mrs. Farganis's
6 niece?

7 A I may have. If it wasn't me, maybe one of
8 my officers did. I don't remember. I don't recall.

9 Q Do you recall that there was a niece involved
10 in this incident?

11 A Yes.

12 Q Do you recall seeing the niece?

13 A I don't remember if I saw her directly. I
14 know that after we -- before she was transported to
15 the station, Mrs. Farganis was taken to see her son
16 in the back of the ambulance. And after that, I
17 believe I had spoken with her so a family member
18 could go to the hospital with the child. We wanted
19 the mother to see the child so that, (A) the child
20 wouldn't be so upset, and, (B) that Mrs. Farganis
21 would calm down and know that her son was receiving
22 appropriate care.

23 She was then placed in the car, brought
24 back to the station. And I don't know if the aunt
25 rode in the back of the ambulance or she went with